REMARKS

Claims 48, 49, 52-77 and 79 are pending in the application. By this Amendment, claim 79 is amended. Claim 79 is further amended to more clearly recite Applicant's claimed invention. No new matter is added by this Amendment.

Reconsideration and allowance in view of the following remarks are respectfully requested. Applicant respectfully submits that the conclusions set forth in the Office Action are unsupported by the teachings of Johnson, U.S. Patent 6,999,943

A. The 35 U.S.C. 102 Rejection

In the Office Action, claims 48, 49, 52-77 and 79 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (hereinafter Johnson) U.S. Patent 6,999,943. This rejection is traversed.[1]

Claim 48 recites "performing, after identifying the single payment source and the payee account, an optimization determination to determine a payment mechanism to use to transfer the funds" - in conjunction with other features. Applicant respectfully submits that Johnson fails to teach or suggest such claimed features. Relatedly, Applicant respectfully submits that the various assertions set forth in the Office Action, to support the 35 U.S.C. 102 rejection, are misplaced and unsupported.

Under 35 U.S.C. §102, the Patent Office bears the burden of presenting at least a prima

[1] As Applicant's remarks with respect to the rejections in the Office Action are sufficient to overcome such rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

facie case of anticipation. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, ***every limitation of the claim***." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The ***identical invention*** must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). "Absence from the reference of ***any*** claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Applicant notes the "Response to Arguments" comments on pages 2-4 of the Office Action. Applicant respectfully submits that such responsive comments fail to address the deficiencies of the rejection. Indeed, Applicant submits that the assertions in the Response to Arguments further reveal the deficiencies, for the reasons discussed below.

On page 3, lines 1-5, the pending Office Action asserts:

> Johnson further teaches that payment from the checking account can be made via ACH transaction or debit card transaction or alternate channel (column 17, line 65 thru column 18, line 14). Johnson further teaches that **this determination can be performed automatically**, using a computer processor in conjunction with the transaction evaluator (column 19, lines 21-52 and Figure 2 and Figure 3).
>
> (emphasis added)

Applicant submits that the assertion set forth above alleging "**this determination can be performed automatically**" is unsupported. As an initial matter, Applicant notes that support and meaning of the term "determination", as relied upon in the Action, is not established. Rather, it appears (according to the analysis proffered in the rejection) that the mere teaching of use of "ACH transaction or debit card transaction or alternate channel" supports the alleged

"determination". It appears the alleged analysis then concludes that since a "determination" indeed takes place, and since the system of Johnson is alleged to work automatically, then the determination is automatic. Applicant submits that such analysis is misplaced in that such "determination" is inappropriately pre-supposed by the analysis.

In other words, the use of one of ACH transaction or debit card transaction or alternate channel does not implicate that the Johnson system performs a "determination" as to which (ACH transaction or debit card transaction or alternate channel) to use. Rather, in the processing it may well be the case that the system simply is advised, based on data associated with the transaction, which method to use. Applicant submits that at the least, the Office Action should more clearly establish what teaching of Johnson is relied upon for such assertion.

That is, to explain even further, the Office Action (as set forth above) alleges Johnson further teaches that this determination can be performed automatically, using a computer processor in conjunction with the transaction evaluator (column 19, lines 21-52 and Figure 2 and Figure 3). However, such disclosure of Johnson provides no discussion of ACH, card or alternate channel. Rather, therein, Johnson is describing general automated system processing.

Relatedly, Applicant acknowledges that Johnson does indeed teach of different channels including ACH transaction or debit card transaction. However, the assertion in the Office Action that Johnson further teaches that this determination can be performed automatically, using a computer processor in conjunction with the transaction evaluator is unsupported. As also discussed in Applicant's prior Response, Applicant submits that the Office Action is asserting (and relying on) an association between disclosure of Johnson which is simply not there.

That is, the disclosure of Johnson in column 19, lines 21-52, sets forth little more than boilerplate computer language. Such disclosure of Johnson does describe that the transaction

evaluators might be automated. However, Applicant submits that to take such general assertion of Johnson, and conclude that the "channel determination" is automated, extends beyond a fair interpretation of Johnson's teachings. The referenced Figs. 2 and 3 are seen to be no more relevant. That is, in Fig. 3 for example, after the payment method is selected in step 350, all that is described is the notification of step 360 and the "process transaction with selected issuer" of step 370. Such steps 350 and 370 clearly fail to support the conclusion in the Office Action (on page 3, line 3, as well as page 4, line 1) - that the determination of channel can be performed automatically.

On page 3, lines 6-16, the Office Action relatedly asserts:

> Specifically, Johnson states that both the transaction benefit and economic utility are computations are preferably performed automatically with one or more general purpose or specialized computers which are attached to one or more computer networks and receive information about the transactions and transmit results (column 19, lines 38-52). Therefore, Johnson does teach that **the determinations**, which are determined from the transaction benefit and economic utility computations are performed automatically. Further, the Examiner notes that this does **not qualify as boilerplate language**, as a description of the computer used for such automation is given. Given a fair reading of the reference, Johnson discloses the computer processors perform the transaction benefit and economic utility computations and therefore **the optimizations are performed** by a computer processor. Therefore, Applicant's argument is not persuasive.
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> (emphasis added)

As discussed above, Applicant requests clarification of what the Office Action is referring to as "the determinations" (as bolded in the excerpt). That is, the Action refers to such as a pre-gone conclusion that Johnson describes such "determinations". However, such is simply not the case, as discussed above.

In the excerpted portion above, the Office Action then appears to inappropriately attenuate further by characterizing the alleged, unsupported "determinations" as "optimizations". Thus, in effect, the Office Action is taking Johnson's teachings that ACH, card, alternate channel may be used, and concluding that an optimization is utilized to determine which one to use.

Applicant submits that such extends beyond the fair teachings of Johnson. In short, the use of ACH, card, alternate channel does not inherently teach optimization of such, but rather simply teaches that ACH, card, alternate channel are used.

On page 2, lines 18-22, the Office Action appears to reflect Johnson's teachings relating to identification of a single payment source. However, Applicant notes that claim 48 clearly recites:

> the processor inputs a plurality of selected payment sources, and performs the second optimization determination to determine which one of the selected payment sources is the single payment source.

Such claim features clearly recite a plurality of selected payment sources. Thus, the Action's implication (as understood by Applicant) that a "single payment source" is sufficient to teach the claimed features is not understood. Clarification or withdrawal is requested.

As described above, Applicant characterized "the disclosure of Johnson in column 19, lines 21-52, sets forth little more than boilerplate computer language." Such characterization goes to the generic nature of such disclosure of Johnson. Applicant submits that such should of course be taken for what it fairly describes, as a part of the disclosure of Johnson, and not inappropriately attenuated as discussed above.

For the reasons set forth above, as well as the reasons set forth in Applicant's July 1, 2009 Response, Applicant respectfully submits that Johnson fails to teach or suggest each and every feature as recited in claim 48. It is respectfully submitted that claim 48 is allowable at least for the reasons set forth above.

Further, independent claims 73 and 79 recite patentable subject matter at least for reasons similar to those set forth above with respect to claim 48.

As noted above, claim 79 is further amended to more clearly recite Applicant's claimed

invention.

The dependent claims recite patentable subject matter based on their dependencies on the respective independent claims, as well as for the additional features such dependent claims recite.

Withdrawal of the 35 U.S.C. §102 rejection is respectfully requested.

B. Conclusion

For at least the reasons outlined above, Applicant respectfully asserts that the application is in condition for allowance. Favorable reconsideration and allowance of the claims are respectfully solicited.

It is believed that no fee is due in connection with this filing. However, if it is determined otherwise, the Commissioner is hereby authorized to charge our Deposit Account No. 50-0206.

Respectfully submitted,

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